

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

Nos. CIV 16-0740 JB/KBM
CR 08-1669 JB

RICHARD MCKENZIE,

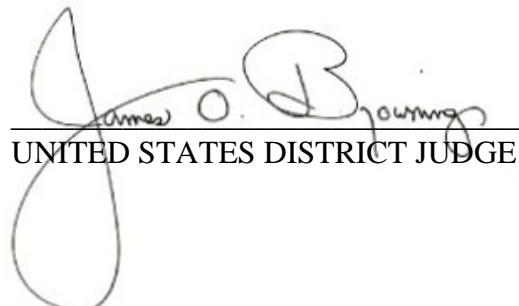
Defendant/Movant.

**MEMORANDUM OPINION AND ORDER OF DISMISSAL OF MOTION TO
CORRECT SENTENCE PURSUANT TO 28 U.S.C. § 2255**

THIS MATTER comes before the Court, under rule 4 of the Rules Governing Section 2255 Proceedings, on: (i) the Defendant/Movant's Motion to Correct Sentence Under 28 U.S.C. § 2255, filed June 22, 2016 (CIV Doc. 1; CR Doc. 219)(“§ 2255 Motion”), and (ii) the Defendant/Movant's Supplemental Motion to Correct Sentence Under 28 U.S.C. § 2255, filed August 9, 2016 (CIV Doc. 6; CR Doc. 223)(“Supplemental Motion”). In his § 2255 Motion and Supplemental Motion, Defendant/Movant Richard McKenzie, alleges that he improperly received an enhanced sentence as a career offender under the United States Sentencing Guidelines, because U.S.S.G. § 4B1.2’s residual clause is unconstitutionally vague under the reasoning in Johnson v. United States, 576 U.S. ___, 135 S. Ct. 2551 (2015). In Beckles v. United States, 580 U.S. ___, No. 15-8544, slip op (March 6, 2017), the Supreme Court of the United States held that the United States Sentencing Guidelines are not subject to a void-for-vagueness challenge. See 580 U.S. ___, No. 15-8544, slip op at 5. Pursuant to the Court’s Order, filed March 9, 2017 (CIV Doc. 14; CR Doc. 230), the parties have filed a Statement that the ruling in Beckles vs. United States is dispositive of all issues that McKenzie’s § 2255 Motion and Supplemental Motion raise, and that the Court should dismiss his § 2255 proceeding with

prejudice. See Proposed Joint Statement, filed March 14, 2017 (CIV Doc. 15; CR Doc. 231). McKenzie is not entitled to relief, and the Court will dismiss, under rule 4, his § 2255 Motion and Supplemental Motion.

IT IS ORDERED that: (i) the Defendant/Movant's Motion to Correct Sentence Under 28 U.S.C. § 2255, filed June 22, 2016 (CIV Doc. 1; CR Doc. 219), and (ii) the Defendant/Movant's Supplemental Motion to Correct Sentence Under 28 U.S.C. § 2255, filed August 9, 2016 (CIV Doc. 6; CR Doc. 223), are dismissed with prejudice.



James O. Bowles
UNITED STATES DISTRICT JUDGE

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